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SUBJECT: JAPANESE RESPONSE TO 2008 HUMAN RIGHTS REPORT

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11. (U) Mitsuko Shino, Director of MOFA's Human Rights and Humanitarian Affairs Division delivered to Embassy Tokyo officers the following non-paper of comments on the "2008 Country Report on Human Rights Practices: Japan."

TEXT OF JAPANESE NON-PAPER

12. (U) (Non Paper)

2008 Country Reports on Human Rights Practices: Japan

Some examples, not all, of our comments are as follows:

-- Section 1 c, Paragraph 3, Page 1
The description "As of year's end, the civil case against three police officers convicted for the 2004 death of a suspect resulted in three convictions, with two of the officers appealing the decision" does not reflect the facts. A court gave a decision on the civil case in February 2009. The court admitted the responsibility of the Wakayama Prefecture only and ordered compensation. Wakayama Prefecture has not appealed this case to any higher court.

-- Line 2, Paragraph 3, page 2
The description "some (prison and detention) facilities provide inadequate food and medical care" is based on subjective judgment on the level of inadequacy. Thus, we would like to know the benchmark for describing "inadequacy of food and medical care".

-- Line 4, paragraph 6, page 2
"In June 2007, the committees began inspecting" should be replaced by "In June 2007 independent inspection regime was established for police-operated detention center facilities as well."

--Line 5, paragraph 3, page 3
"An additional five day extension" is not generally granted and could only be applicable to the extremely limited types of crimes such as insurrection, foreign aggression and disturbance. In other words, such "five-day extension" could only be authorized in extremely exceptional cases.

--Line 4, paragraph 5, page 3
The description "detainees charged with drug offenses were routinely held incommunicado until indictment" is not factually correct. The court may, regardless of the charge,

prohibit a detained suspect from having interview with persons other than his/her counsel or prospective counsel only insofar as there is a probable cause to suspect that the accused may flee or conceal or destroy evidence (Article 81, Code of Criminal Procedure). In practical terms also, the court applies this prohibition very carefully.

-- Line 7, paragraph 5, page 3

The number of the prefectures that begun testing supervised interrogations was 46 not "39".

-- Line 2-3, paragraph 6, page 3

There is no such "manual of police interrogation procedures" that "showed that police investigators are authorized to use heavy pressure to extract confessions".

-- Line 3, paragraph 3, page 4

The description that "trials preceded even if no translation or interpretation was provided" is not factually true. Trials cannot proceed if no translation or interpretation is provided.

-- Line 1-3, Paragraph 4, Page 4

The description "The use of police-operated detention centers, which puts suspects in the custody of their interrogators, has been on the rise for more than 30 years." does not reflect the facts. As the practice of Japanese police, the function of investigation has been clearly separated that of detention, namely, interrogators do not have the custody of their suspects. Such practice is stipulated in the Article 16 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees that a detention officer shall not be engaged in criminal investigation related to such a detainee that is detained in

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the detention facility of the detention officer. National Police Agency also regulates investigators from entering detention facilities.

-- Line 4-5, Paragraph 4, page 4

"The judiciary also gives much weight to confessions" is based on subjective judgment. The court takes all related factors into impartial consideration

-- Line 2-3, Paragraph 5, page 4

The description "In October man was acquitted in a 2002 rape case in which police forced him to confess" does not reflect the facts. The court did not affirm the allegation raised by the defendant that the police used violence and threats to acquire his confession. Please also refer to the report of investigation of the case: "problems of police investigation included in the case of Toyama and Shibshi" (January 2008, NPA).

-- Line 1, Paragraph 6, page 4

"Trial procedures favor the prosecution is based on subjective judgment. The criminal procedure is led by the court impartially to each participant. See also our explanation above appointment of counsel and disclosure procedure below.

-- Line 1-2, paragraph 6, page 4

The report describes that access to counsel was "insufficient". On the contrary, a defendant or suspect has the right to counsel and is entitled to appoint a counsel at any time. When the defendant or suspect is unable to appoint counsel because of indigency or other reasons, the court shall appoint counsel.

-- Line 3-5, paragraph 6, page 4

The description that "material that the prosecution does not use in court may be suppressed" and "defense attorneys were not granted access to possible exculpatory DNA evidence" are not factually correct because any evidence, including DNA, can be disclosed through the disclosure procedure in

accordance with the Code of Criminal Procedure, when the conditions are met.

-- Line 5-8, paragraph 4, page 6

The system of refugee examination counselors is in place as neutral, third-party institution to inspect refugee applications on a secondary basis being operated in ways to respect the counselors' opinion. Thus, the criticism about the lack of an independent body to review applications for refugee status is not appropriate. In addition, the description that "the Ministry of Justice does not allow applicants for refugee status to select legal representatives, and the restrictions on government legal assistance for nonresident" is not factually correct since there is no such restriction.

-- Paragraph 5, page 6

"Of 816 applicants for refugee status during the year", should be replaced by "Of 816 applicants for refugee status during 2007". Otherwise, "Of 1,599 applicants for refugee status during the year (2008), 57 persons were granted refugee status and 360 were allowed to stay on humanitarian grounds".

-- Paragraph 6, page 7

There is no such a fact that "the UN Human Rights Council criticized the country's apologies to and compensation for "comfort women" as inadequate" It is likely that "Human Rights Committee" was misquoted as "UN Human Rights Council".

The Asian Women Fund was established to offer payments and to implement medical and welfare projects for former comfort women, which was funded by the Government and the people of Japan

Not only Prime Minister Koizumi but also the successive Prime Ministers sent letters expressing apologies and remorse to all former comfort women.

--Last line of paragraph 1, page 9

The sentence "Male and female migrant workers were subjected

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to conditions of forced labor" sounds as if all migrant workers are under such situation and it is misleading. There is no substance in such description.

As for TIP, there are several descriptions which are not based on the facts, and which reflect misunderstanding on TIP situation in Japan. Please refer to the document passed on April 14th to the U.S. Embassy in Tokyo, as the response to the questionnaire, titled "Japan's TIP SITUATION".
ZUMWALT